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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

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7 BEHROOZ MOHAZZABI,  
8 Plaintiff,  
9 v.  
10 WELLS FARGO, N.A.,  
11 Defendant.

Case No. 2:18-cv-02137-RFB-VCF

**ORDER**

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13 **I. INTRODUCTION**

14 Before the Court are two interrelated motions: Defendant Wells Fargo, N.A.'s (Wells  
15 Fargo) Motion to Compel Arbitration, and Defendant Wells Fargo's Motion to Seal its Reply. ECF  
16 Nos. 4, 16. For the following reasons, the Court grants both motions.

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18 **II. PROCEDURAL BACKGROUND**

19 Plaintiff Behrooz Mohazzabi ("Mohazzabi") sued Wells Fargo on or around October 8,  
20 2018 in the Eighth Judicial District Court for the state of Nevada. ECF No. 1-1. He alleges that  
21 \$20,000 was unlawfully withdrawn from his checking account with Wells Fargo Bank on  
22 October 28, 2016. Mohazzabi further alleges that Wells Fargo employees failed to properly  
23 investigate the incident. Mohazzabi asserts breach of contract, breach of implied covenant of  
24 good faith and fair dealing, quantum meruit, conversion, elder abuse in violation of section  
25 41.1395 of the Nevada Revised Statutes ("NRS"), fraudulent concealment, deceptive trade  
26  
27  
28

1 practices in violation of NRS section 598, and negligent hiring, training, supervision and  
2 retention claims in his complaint.

3 Wells Fargo removed the case to federal court on November 6, 2018 and filed its motion  
4 to compel arbitration on that same date. ECF Nos. 1, 4. A response and reply were filed. ECF  
5 Nos. 11, 15. Wells Fargo also filed a motion to seal its reply. ECF No. 16.

### 7 **III. FACTUAL BACKGROUND**

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9 Mohazzabi visited a Wells Fargo branch on or about October 3, 2016, and signed up for a  
10 checking account. While at the bank, he signed a Consumer Account Application. Above the  
11 Consumer Account Application, just above Mr. Mohazzabi's signature, it states in relevant part  
12 that:

13  
14 **I have received a copy of the applicable account agreement and the**  
15 **privacy policy (each may be amended from time to time) and agree to be**  
16 **bound by their terms.** I also agree to the terms of the dispute resolution  
17 **program described in the foregoing agreements. Under the dispute**  
18 **resolution program, our disputes will be decided before one or more**  
**neutral persons in an arbitration proceeding and not by a jury trial or a**  
**trial before a judge.** (emphasis in the original)

19 In addition to the Consumer Account Application, Wells Fargo alleges that Mohazabbi received  
20 a copy of a Consumer Account Agreement ("CAA"). While the parties dispute whether  
21 Mohazzabi ever received a copy of the CAA, they do not dispute the contents of the agreement  
22 itself. The CAA contains a provision requiring arbitration of "any unresolved disagreement,"  
23 before the American Arbitration Association.

24  
25 Mohazzabi maintains in a declaration submitted with the Court that he never received the  
26 CAA and that no one explained to him that he was waiving his right to a jury trial. Wells Fargo  
27 argues that Mohazzabi consented to have the CAA and other disclosure documents emailed to  
28 him. Wells Fargo states that its internal records indicate that Mohazzabi clicked on the consent

1 button to accept disclosure documents electronically. Furthermore Wells Fargo notes that its  
2 bankers cannot complete the new account opening process until the customer accepts and  
3 acknowledges electronic receipt of the CAA and the other disclosure documents.

4  
5 Finally, Wells Fargo moves to seal the documents it submitted to the Court regarding  
6 Mohazzabi's account, on the grounds that the documents contain Mohazzabi's personally  
7 identifiable information and information that is proprietary to Wells Fargo.

#### 8 9 **IV. LEGAL STANDARD**

##### 10 **a. Motion to Compel Arbitration**

11 The Federal Arbitration Act ("FAA") provides that a "written provision in . . . a contract  
12 evidencing a transaction involving commerce to settle by arbitration a controversy thereafter  
13 arising . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or  
14 in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA provides two methods for  
15 enforcing arbitration: (1) an order compelling arbitration of a dispute; and (2) a stay of pending  
16 litigation raising a dispute referable to arbitration. 9 U.S.C §§ 3, 4.

17 "By its terms, the Act leaves no place for the exercise of discretion by a district court, but  
18 instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to  
19 which an arbitration agreement has been signed." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S.  
20 213, 218 (1985). The FAA limits the district court's role to determining (1) whether the parties  
21 agreed to arbitrate, and, if so, (2) whether the scope of that agreement to arbitrate encompasses the  
22 claims at issue. Nguyen v. Barnes & Noble Inc., 763 F.3d 1171, 1175 (9th Cir. 2014).  
23 "The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope  
24 of arbitrable issues should be resolved in favor of arbitration . . . ." Moses H. Cone Mem'l Hosp.  
25 v. Mercury Const. Corp., 460 U.S. 1, 24-25 (1983). Thus, "[t]he standard for  
26 demonstrating arbitrability is not a high one; in fact, a district court has little discretion to deny  
27 an arbitration motion, since the Act is phrased in mandatory terms." Republic of Nicar. v. Std.  
28 Fruit Co., 937 F.2d 469, 475 (9th Cir. 1991). In fact, "Section 2 of the FAA requires courts to  
enforce agreements to arbitrate according to their terms, in order to place an arbitration agreement

1 upon the same footing as other contracts and to overrule the judiciary's longstanding refusal to  
2 enforce agreements to arbitrate.” O’Conner v. Uber Technologies, Inc., 904 F.3d 1087, 1093 (9th  
3 Cir. 2018) (internal quotations and citations omitted). However, “arbitration is a matter of contract  
4 and a party cannot be required to submit to arbitration any dispute which he has not agreed so to  
5 submit.” AT & T Technologies, Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 648  
6 (1986) (internal quotation omitted).

7 The determination of whether a particular issue should be decided by the arbitrator rather  
8 than the court is governed by federal law. Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d  
9 1126, 1130 (9th Cir. 2000). However, when deciding whether the parties agreed to arbitrate a  
10 certain matter, courts generally apply ordinary state law principles of contract interpretation. First  
11 Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995).

12 Section 3 of the FAA provides for a stay of legal proceedings whenever the issues in a case  
13 are within the reach of an arbitration agreement. 9 U.S.C. § 3. Although the statutory language  
14 supports a mandatory stay, the Ninth Circuit has interpreted this provision to allow a district court  
15 to dismiss the action. See Sparling v. Hoffman Const. Co., 864 F.2d 635, 638 (9th Cir. 1988). A  
16 request for a stay is not mandatory. Martin Marietta Aluminum, Inc. v. Gen. Elec. Co., 586 F.2d  
17 143, 147 (9th Cir. 1978).

#### 18 **b. Motion to Seal**

19 Courts have long recognized “a general right to inspect and copy public records and  
20 documents, including judicial records and documents.” Kamakana v. City & Cty. of Honolulu,  
21 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting Nixon v. Warner Commc'ns, Inc., 435 U.S. 589,  
22 597 & n.7 (1978) (quotation marks omitted). However, this right is not absolute. Id. There is a  
23 “strong presumption in favor of access” to dispositive motions or their attachments, and a party  
24 seeking to seal such documents bears the burden of overcoming this presumption by providing a  
25 compelling and fact-based reason for the document to be sealed. Id. (citations and quotation  
26 marks omitted). “[I]f the court decides to seal certain judicial records [attached to  
27 dispositive motions], it must base its decision on a compelling reason and articulate the factual  
28

1 basis for its ruling, without relying on hypothesis or conjecture.” Id. at 1179 (citation and  
2 quotation marks omitted). Compelling reasons include sensitive personal information contained  
3 in the records. Id. at 1182.  
4

## 5 **V. DISCUSSION**

6 Mohazzabi tries to argue both that he did not consent to arbitration, and that even if the  
7 Court found that he did, that the arbitration provision is unenforceable on procedural and  
8 substantive unconscionability grounds. The Court disagrees. Based on the evidence submitted by  
9 the parties, the Court finds that Mohazzabi and Wells Fargo entered a binding contract to arbitrate,  
10 and that the contract is not unconscionable under Nevada state law.

11 The Court first addresses the question of whether the parties consented to arbitration. It is  
12 undisputed that Mohazzabi signed a consumer account application that stated above the signature  
13 block that he understood that he was consenting to alternative dispute resolution. The Court also  
14 finds compelling the evidence that Wells Fargo submitted from its internal database indicating that  
15 Mohazzabi had access to and received documents, including the CAA, after providing his email  
16 address to Wells Fargo, and clicked “I Accept” on a consent button acknowledging receipt and  
17 agreement to the terms contained therein. The Court finds that this is sufficient evidence that  
18 Mohazzabi received and consented to the arbitration agreement contained within the CAA.

19 Under Nevada law, an arbitration clause is procedurally unconscionable “when a party  
20 lacks a meaningful opportunity to agree to the clause terms either because of unequal bargaining  
21 power, as in an adhesion contract, or because the clause and its effects are not readily ascertainable  
22 upon a review of the contract.” KJH & RDA Investor Group, LLC v. Eighth Judicial Dist. Court  
23 of State ex rel. Cty. of Clark, 281 P.3d 1192 (Nev. 2009) (internal citations omitted). “The gist of  
24 this element ‘focuses on two factors: oppression and surprise.’” Id. “An adhesive contract is “a  
25 standardized contract form offered to consumers . . . on a ‘take it or leave it’ basis, without  
26 affording the consumer a realistic opportunity to bargain.” Burch v. Second Judicial Dist. Court of  
27 State ex. rel Cty. of Washoe, 49 P.3d 647, 649 (Nev. 2002). “The distinctive feature of an adhesion  
28 contract is that the weaker party has no choice as to its terms.” Id.

1 Adhesive contracts are increasingly common for consumers in the marketplace today. KJH  
2 & RDA Investor Group, LLC, 281 P.3d, at 1192 (noting that the average consumer “faces adhesive  
3 contracts as a reality of obtaining basic goods and services”). However, “[a]n adhesion contract  
4 need not be unenforceable if it falls within the reasonable expectations of the weaker or “adhering”  
5 party and is not unduly oppressive.” Obstetrics and Gynecologists William G. Wixted, M.D. v.  
6 Pepper, 693 P.2d 1259, 1261 (Nev. 1985).

7 In this case, the Court finds that the CAA and its corresponding arbitration provision was  
8 an adhesive contract. The contract is clearly proforma and prospective customers are not truly  
9 given a realistic opportunity to negotiate its terms. Indeed, Wells Fargo itself explains that  
10 prospective customers wishing to open an account with the bank could not do so unless the  
11 customer acknowledged receipt of and agreed to the terms of the CAA. To expedite the new  
12 account process, Wells Fargo employees required customers who did not elect to receive hard  
13 copies of the CAA to provide their email addresses on their mobile devices during the account  
14 opening process. If the prospective customer had not already consented to receipt of documents  
15 electronically, the Wells Fargo employee could not open the new bank account until they clicked  
16 “accept.” At no point in this process are prospective customers told they can negotiate terms of the  
17 contract. The requirement that customers who opt not to receive physical copies of the CAA have  
18 their mobile devices with them may also put pressure on prospective customers to agree to terms  
19 hurriedly. These are all factors that indicate that Wells Fargo’s CAA is an adhesive contract, and  
20 because the consumer lacks a meaningful opportunity to agree to the clause terms, is procedurally  
21 unconscionable.

22 However, while the Court does find that the agreement was an adhesive contract and  
23 procedurally unconscionable, the Court does not find that the agreement was substantively  
24 unconscionable. Under Nevada law, a contract may be substantively unconscionable when it  
25 contains oppressive terms or is one-sided. Gonski v. Second Judicial Dist. Court of State ex rel  
26 Washoe, 245 P.3d 1164, 1169 (Nev. 2010) overruled on other grounds by U.S. Home Corp. v.  
27 Michael Ballestreros Trust, 415 P.3d 32 (Nev. 2018). The language regarding agreement to  
28 arbitration is contained in the consumer application that customers sign and is also in the

1 accompanying CAA. The CAA describes the arbitration procedures in clear language that provides  
2 both consumers and the bank with an opportunity to arbitrate. ECF No. 4-1. (“If your banker is  
3 unable to resolve your dispute, you agree that either Wells Fargo or you can initiate arbitration as  
4 described in this section.”). The agreement requires each party to bear its own costs. Id. The  
5 arbitration provision does include a class action waiver, but the Supreme Court has held that such  
6 provisions are not per se unconscionable and that state law cannot render them so. AT&T Mobility  
7 LLC v. Concepcion, 563 U.S. 333, 348-49 (2011). The Court thus does not find the contract  
8 inherently oppressive or one-sided under Nevada law. Because the Court is required to find that a  
9 contract is both procedurally and substantively unconscionable in order to find it unconscionable  
10 as a whole, and the Court does not find that the arbitration agreement is substantively  
11 unconscionable, the Court will not void the arbitration agreement on grounds of unconscionability.  
12 Greystone Nevada, LLC v. McCoy, 416 P.3d 198 (Nev. 2018).

13 The Court notes that the arbitration agreement provides that any dispute, including disputes  
14 as to the arbitration agreement’s “meaning, application or enforcement,” must be submitted to  
15 arbitration. The Court thus finds that this arbitration clause is broad enough to require that all of  
16 Mohazzabi’s claims are arbitrated. The Court therefore exercises its discretion as articulated by  
17 the Ninth Circuit in Sparling v. Hoffman Const. Co., Inc., 864 F.2d 635, 638 (9th Cir. 1988) to  
18 dismiss all claims in this action.

19 Furthermore, the Court also finds that personally sensitive information is contained in  
20 Wells Fargo’s reply to its motion to compel arbitration. Compelling reasons being found, the Court  
21 will permit Wells Fargo to file its exhibits to its reply brief to its motion to compel arbitration  
22 under seal.

1  
2 **VI. CONCLUSION**

3 **IT IS THEREFORE ORDERED** that Defendant Wells Fargo, N.A.'s Motion to Compel  
4 Arbitration, (ECF No. 4), and Motion to Seal Reply (ECF No. 16) are granted.

5 **IT IS FURTHER ORDERED** that all claims in this case are dismissed as the Court finds  
6 that they are subject to mandatory arbitration.

7 The Clerk of the Court is instructed to close the case.

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9 DATED: September 25, 2019.



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11 **RICHARD F. BOULWARE, II**  
12 **UNITED STATES DISTRICT JUDGE**